

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Wang et al.

Atty. Docket No.: 006401.00417

Serial No.: 10/687,471

Group Art Unit: 1791

Filed: October 15, 2003

Examiner: Huson

For: Cold-Water Soluble Extruded Starch
Product

Confirmation No.: 8885

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The Examiner has maintained the final rejection over Nakatsuka et al, in view of Redding, Jr. and Altieri, despite the decision in Serial No. 09/863,928 reversing the Examiner and disagreeing with the Examiner's analysis of these same three references. The sole basis expressed in the Advisory Action for maintaining the rejection is that the present claims are a product-by-process claims and "therefore the reasoning that Applicant has provided from the Board's decision does not apply to the product claims." This is clear error.

The claims require an extruded starch product prepared by a process that includes, *inter alia*, extruding starch at a temperature in a first extruder zone being insufficient to gelatinize the starch but in a second zone begin sufficient to gelatinize the starch. In analyzing Nakatsuka, the Board held "[t]he Examiner offers no evidence in support of the finding that 'gelatinization' occurs about 150 C to 175 C." The Board further held that "[w]e agree with Appellants that the Examiner has offered no reasoning, nor pointed to any evidence of record indicating that the starch-protein composition of Nakatsuka's Example 1 undergoes gelatinization." Because the Examiner had failed to demonstrate the Nakatsuka material undergoes gelatinization, the Board reversed the Examiner.

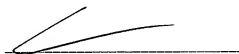
The same reasoning applies here since the claims of the application require a process including "the temperature in said second zone [of the extruder barrel] being sufficient to gelatinize said starch," and since the Board held "the Examiner has offered no reasoning, nor pointed to any evidence of record indicating that the starch-protein composition of Nakatsuka's Example 1 undergoes gelatinization," the rejection is improper.

The undersigned wishes to avoid the further costs and expense of Appeal and request that Examiner be reversed.

Respectfully submitted,

Dated: March 19, 2009

By:



Allen E. Hoover
Registration No. 37,354
BANNER & WITCOFF, LTD.
10 South Wacker Drive, Suite
Chicago, Illinois 60606
Telephone: 312-463-5000
Facsimile: 312-463-5001